

02:16PM

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF NEW YORK

4 CONSUMER FINANCIAL PROTECTION BUREAU,

5 vs.
6 Plaintiff,

Case No. 1:22-cv-29
(LJV)

October 12, 2023

7 CRAIG MANSETH,
8 JACOB ADAMO,
9 DARREN TURCO,
10 UNITED DEBT HOLDING LLC,
11 JTM CAPITAL MANAGEMENT, LLC,
12 UHG, LLC,
13 UHG I LLC, a/k/a United Holding Group
14 UHG II LLC, Collectively holding
15 themselves out as United Holding
16 Group, United Holding Group, LLC
17 and United Holdings Group, LLC

18 Defendants.

19 TRANSCRIPT OF ORAL ARGUMENT - via ZOOM FOR GOVERNMENT
20 BEFORE THE HONORABLE LAWRENCE J. VILARDO
21 UNITED STATES DISTRICT JUDGE

22 APPEARANCES:

23 CONSUMER FINANCIAL PROTECTION BUREAU
24 BY: STEPHANIE C. BRENOWITZ, ESQ.
25 VANESSA ANNE BUCHKO, ESQ.
1 STEPHANIE B. GARLOCK, ESQ.
2 CHRISTOPHER D. JACKSON, ESQ.
3 1700 G Street, NW
4 Washington, D.C. 20552
5 For the Plaintiff

1 **LIPPIES MATHIAS LLP**
2 **BY: BRENDAN H. LITTLE, ESQ.**
3 50 Fountain Plaza
4 Suite 1700
5 Buffalo, New York 14202
6 And
7 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**
8 **BY: MATTHEW C. ARENTSEN, ESQ.**
9 **SARAH J. AUCHTERLONIE, ESQ.**
10 675 Fifteenth Street
11 Suite 2900
12 Denver, Colorado 80202
13 For the Defendant Craig Manseth

14 **LAW CLERK:** **CHELSEA R.C. THOMEER, ESQ.**

15 **COURT DEPUTY CLERK:** **COLLEEN M. DEMMA**

16 **COURT REPORTER:** **ANN M. SAWYER, FCRR, RPR, CRR**
17 Robert H. Jackson Courthouse
18 2 Niagara Square
19 Buffalo, New York 14202
20 Ann_Sawyer@nywd.uscourts.gov

02:40PM 1 (Proceedings commenced at 2:40 p.m.)
02:40PM 2 THE COURT: Can everybody hear me?
02:40PM 3 MR. LITTLE: Good afternoon, Judge.
02:40PM 4 THE CLERK: I'll call the case, Judge.
02:40PM 5 The United States District Court for the Western
02:40PM 6 District of New York is now in session, the Honorable
02:40PM 7 Lawrence J. Vilardo presiding.
02:40PM 8 22-CV-29, Consumer Financial Protection Bureau versus
02:40PM 9 Manseth, et al.
02:40PM 10 Attorneys Stephanie Brenowitz, Vanessa Buchko,
02:41PM 11 Stephanie Garlock, and Christopher Jackson, appearing on
02:41PM 12 behalf of the plaintiff.
02:41PM 13 Attorneys Matthew Arentsen, Sarah Auchterlonie, and
02:41PM 14 Brendan Little, appearing on behalf of the defendants.
02:41PM 15 All parties are appearing by Zoom videoconference,
02:41PM 16 and this is the date set for an oral argument.
02:41PM 17 THE COURT: Okay. Good afternoon, everybody. Let me
02:41PM 18 start by saying what I've been saying at the beginning of all
02:41PM 19 these conferences that we've done by phone or by Zoom, and
02:41PM 20 that is that no one is to record or rebroadcast this in any
02:41PM 21 way. That's under penalty of contempt and the sanctions that
02:41PM 22 might go along with it.
02:41PM 23 So who's going to argue on behalf of the defendants?
02:41PM 24 MR. LITTLE: I am, Judge.
02:41PM 25 THE COURT: Okay. And who's going to argue on behalf

02:41PM 1 of the plaintiff?

02:41PM 2 MS. GARLOCK: I am, Your Honor.

02:41PM 3 THE COURT: Ms. Garlock?

02:41PM 4 MS. GARLOCK: Yes.

02:41PM 5 THE COURT: Okay. So, Mr. Little, I guess it's your
02:41PM 6 motion for a stay, so the floor is yours to begin.

02:41PM 7 MR. LITTLE: Thank you, Judge.

02:41PM 8 May it please the Court, I think the five factors are
02:41PM 9 well briefed before the Court, and the rationale. I'm not
02:42PM 10 gonna repeat my brief on that. I think those factors are well
02:42PM 11 settled.

02:42PM 12 I'd like to go right into the CFPB's arguments why a
02:42PM 13 stay is not warranted, if I could, to expedite this process.

02:42PM 14 THE COURT: Yep.

02:42PM 15 MR. LITTLE: The first, the CFPB argued that
02:42PM 16 originally the defendants did not argue about the
02:42PM 17 constitutionality of the existence of the CFPB, and that is
02:42PM 18 entirely accurate. We moved in early 2022, long before the
02:42PM 19 5th Circuit found it being unconstitutional, I think there was
02:42PM 20 a mistake or a typo in the opposition brief saying we did not
02:42PM 21 mention it in oral argument in March 2023. There was not an
02:42PM 22 argument in 2023, it was in January of '23. The U.S. Supreme
02:42PM 23 Court granted cert in February of 2023.

02:42PM 24 So, at the time, yes, we raised the 5th Circuit's
02:42PM 25 existence or the case of -- with the Court, but did not

02:42PM 1 advocate for a stay. It is not until the Supreme Court
02:43PM 2 ultimately granted cert and, of course, has heard argument
02:43PM 3 already.

02:43PM 4 THE COURT: Let me -- let me tell you -- let me cut
02:43PM 5 to the quick even a little more. The argument that the
02:43PM 6 plaintiffs make that turns my head a bit, Mr. Little, is the
02:43PM 7 prejudice to them from, you know, memories fading and not
02:43PM 8 being able to conduct some discovery within the next eight
02:43PM 9 months. What's the reason that we should stay this altogether
02:43PM 10 and not just perhaps impose a schedule that would allow some
02:43PM 11 but not exhaustive discovery to take place in the next eight
02:43PM 12 months? Why aren't they entitled to at least preserve what
02:43PM 13 they want to preserve in connection with the litigation?

02:43PM 14 MR. LITTLE: Judge, because before this litigation
02:43PM 15 was filed, they did two years worth of discovery to the CID
02:43PM 16 process. We, the defendants, have turned over terabytes of
02:43PM 17 information, which is supposedly the basis for the amended
02:43PM 18 complaint. That's where they got all of the supposed
02:44PM 19 recordings and information, et cetera.

02:44PM 20 So unlike a traditional, you know, plaintiff versus
02:44PM 21 defendant lawsuit, the government has availed themselves of
02:44PM 22 their opportunity to serve the CIDs and, you know, hundreds if
02:44PM 23 not --

02:44PM 24 THE COURT: Have -- have they taken depositions?

02:44PM 25 MR. LITTLE: They have not taken -- they have not --

02:44PM 1 they have sat for some information, but they have not taken
02:44PM 2 depositions of the individual defendants.

02:44PM 3 THE COURT: So, so, and I think that that's what
02:44PM 4 they're talking about when they talk about, you know, memories
02:44PM 5 fading, that there are things that they'd like to preserve
02:44PM 6 now. And so, again, my question to you is: What -- what is,
02:44PM 7 you know, I understand what the harm is. The harm is that you
02:44PM 8 may not have to do any of this if the Supreme Court decides
02:44PM 9 that the 5th Circuit was right. But --

02:44PM 10 MR. LITTLE: And --

02:44PM 11 THE COURT: -- but we don't know that that's going to
02:44PM 12 be the case. And, you know, so it seems to me that there is
02:44PM 13 at least some interest on the plaintiff's part that there not
02:45PM 14 be a complete stay, but as I say, perhaps, you know,
02:45PM 15 scratching the itch that they say they have with respect to
02:45PM 16 preserving memories, preserving evidence that might be lost as
02:45PM 17 memories fade. I understand that.

02:45PM 18 MS. AUCHTERLONIE: If I may, Your Honor, I've
02:45PM 19 represented the defendants in the CID process, and there have
02:45PM 20 been three investigational hearings which are like a
02:45PM 21 deposition, however they're under the administrative
02:45PM 22 authority, two former employees and one of the owner, Craig
02:45PM 23 Manseth. So they do have that testimony preserved.

02:45PM 24 THE COURT: Okay. Thank you.

02:45PM 25 MR. LITTLE: Thank you, Sarah. Yeah.

02:45PM 1 And, Judge, it's also the cost, right? I mean, you
02:45PM 2 know, we've spent hundreds of thousands of dollars already in
02:45PM 3 the CID process, and so, you know, all of the, quote, unquote,
02:45PM 4 evidence that's out there is really not in the possession of
02:45PM 5 the defendants, these are these supposed, you know, consumers
02:46PM 6 that are out there or the agencies that have been making the
02:46PM 7 telephone calls.

02:46PM 8 Remember, Judge, this is not about what -- UHG's
02:46PM 9 conduct, this is about UHG supposedly ignoring the conduct of
02:46PM 10 third parties.

02:46PM 11 THE COURT: Right.

02:46PM 12 MR. LITTLE: So this has nothing to do with, per se,
02:46PM 13 UHG's conduct. So that -- and they have the information
02:46PM 14 already, that's supposedly the basis for the amended complaint
02:46PM 15 when they got to the CID process. And then we have the cost
02:46PM 16 of this, argument was already had. I get that, you know, some
02:46PM 17 of these denials were out there, because, hey, we don't even
02:46PM 18 know if the Supreme Court's gonna take this. Okay. Then they
02:46PM 19 have taken it. Oh, we don't even have an argument yet. The
02:46PM 20 argument's already happened. I mean, this is kind of a unique
02:46PM 21 scenario when in making an application for a stay, the
02:46PM 22 argument has already taken place. So we're talking about a
02:46PM 23 short delay. We're talking about --

02:46PM 24 THE COURT: Well, it could be, I mean, you say
02:46PM 25 "short." The Supreme Court often has a flurry of opinions in

02:46PM 1 May and June, right? So we could be talking nine months.

02:46PM 2 MR. LITTLE: Sure. But it's not -- I agree, Judge,
02:47PM 3 but it's, you know, in a typical fashion, sometimes we're
02:47PM 4 asking for an 18-month stay, right?

02:47PM 5 THE COURT: Yeah.

02:47PM 6 MR. LITTLE: Because they just had granted cert,
02:47PM 7 briefings done, arguments had. Yes, I'll grant it, six months
02:47PM 8 is six months. But, you know, in the grand scheme of things
02:47PM 9 of Supreme Court litigation, six months is, I guess, rather
02:47PM 10 quick.

02:47PM 11 THE COURT: Yeah. Let me ask Ms. Garlock, what do
02:47PM 12 you need? Why -- why should -- well, let me -- let me ask
02:47PM 13 another question first.

02:47PM 14 The way -- it seems to me that the weight of the
02:47PM 15 authority seems to be in favor of granting the stay.

02:47PM 16 You've got a couple Massachusetts cases and an
02:47PM 17 Illinois case on the District Court level. You don't have
02:47PM 18 anything from the 2nd Circuit, at least I don't see anything
02:47PM 19 cited from courts in the 2nd Circuit that have denied stays.

02:47PM 20 Would you agree with me that the weight of the
02:47PM 21 authority seems to be in favor of staying?

02:47PM 22 MS. GARLOCK: I wouldn't agree that the weight of the
02:47PM 23 authority is in favor of staying, in part because there are
02:47PM 24 decisions on both sides. The bureau has consistently opposed
02:48PM 25 a stay and has -- and courts have continued to move forward,

02:48PM 1 including even courts evaluating the merits of the
02:48PM 2 constitutional argument which, again, this is something this
02:48PM 3 Court doesn't have to do since it's --

02:48PM 4 THE COURT: Right.

02:48PM 5 MS. GARLOCK: -- not before -- before you now.

02:48PM 6 So, I mean, I think, you know, courts across the
02:48PM 7 country are dealing with relatively similar sets of concerns,
02:48PM 8 although obviously applying them in different cases.

02:48PM 9 Here we have quite significant showing of ongoing
02:48PM 10 consumer harm, the same exact kind of consumer harm evidence
02:48PM 11 that the District Court in Illinois found in TransUnion. And
02:48PM 12 so while we don't have cases in the 2nd Circuit, we also would
02:48PM 13 again point to some of the discussion of why I think the
02:48PM 14 Credit Acceptance Corp. and MoneyGram courts were faced with a
02:48PM 15 little bit of a different decision than Your Honor has --

02:48PM 16 THE COURT: Do you have any decisions -- so I've
02:48PM 17 noted two Massachusetts cases, one from the Illinois court,
02:48PM 18 Northern District, I think, of Illinois. And then the only
02:49PM 19 other case I think you cite is a Surrogate's Court case from
02:49PM 20 the 9th Circuit. Are there any other cases that you have?

02:49PM 21 MS. GARLOCK: So those are the cases denying stays.
02:49PM 22 But there are also of court cases that are just moving forward
02:49PM 23 where there might have been other procedural hurdles, but
02:49PM 24 where courts have -- I know the bureau has won at summary
02:49PM 25 judgment several times since the Supreme Court granted cert in

02:49PM 1 CFSA. So there are certainly zero enforcement actions moving
02:49PM 2 forward across the country.

02:49PM 3 I have one other case I'd like to draw your attention
02:49PM 4 to which might be a little bit of a model here, which is --
02:49PM 5 and it's not cited in our papers since much of this was a
02:49PM 6 discussion in a hearing. Let me pull it up. It's the Bureau
02:49PM 7 of Litigation against Fifth Third in the Southern District of
02:49PM 8 Ohio, that's 21-cv-262. There was a hearing on pleadings in
02:49PM 9 that case, but discovery was ongoing. And the district court
02:50PM 10 at a hearing in the spring indicated, you know, it was an
02:50PM 11 extensive discovery hearing, it took all day, and the Court
02:50PM 12 decided that it wanted to move forward on deciding a motion
02:50PM 13 for judgment on the pleadings to the extent there were
02:50PM 14 nonconstitutional grounds. And so we think that is -- could
02:50PM 15 be a model here, not that there is a pending motion raising
02:50PM 16 the constitutional issue, but for many of the same reasons
02:50PM 17 allowing the Bureau to continue to pursue discovery
02:50PM 18 notwithstanding that there is obviously some open
02:50PM 19 constitutional question. And we think --

02:50PM 20 THE COURT: So let me ask you this. When you talk
02:50PM 21 about the cases that are ongoing where there has not been a
02:50PM 22 decision made, I assume that's because the defendants have not
02:50PM 23 asked for a stay.

02:50PM 24 MS. GARLOCK: So in some of them they didn't ask for
02:50PM 25 a stay. There was -- there was one of the cases cited in our

02:50PM 1 brief, Credit -- sorry, Consumer Advocacy Center in the
02:50PM 2 Central District of California, there was a summary judgment
02:51PM 3 case and the defendant made the motion on the merits. He --
02:51PM 4 or, he didn't oppose that the Bureau's summary judgment motion
02:51PM 5 on the merits, raising the funding issue is also in a footnote
02:51PM 6 said you also could stay this litigation, the Court didn't see
02:51PM 7 the need to stay the litigation, and decided summary judgment
02:51PM 8 in favor of the Bureau, and that case is now on appeal in the
02:51PM 9 9th Circuit.

02:51PM 10 THE COURT: Okay. But let --

02:51PM 11 MS. GARLOCK: So there's a variety of different
02:51PM 12 things, but we think that TransUnion is also -- you know, the
02:51PM 13 Northern District of Illinois case is possibly the most
02:51PM 14 helpful to you.

02:51PM 15 THE COURT: No, I understand, and I'm not -- and I'm
02:51PM 16 not -- I'm not trying to -- to look at the quality of the
02:51PM 17 decisions, I just want to look at the quantity of the
02:51PM 18 decisions. And in your -- and you seem to be fighting me on
02:51PM 19 numbers that -- that doesn't seem like it's a fight you're
02:51PM 20 gonna win because Mr. Little cites, you know, I don't know, a
02:51PM 21 dozen cases maybe, and you've given me three.

02:52PM 22 MS. GARLOCK: Sorry, Your Honor. I would just say, I
02:52PM 23 don't think it's a dozen cases. There are, you know, there
02:52PM 24 are of course the two cases in the Southern District of
02:52PM 25 New York, which we've explained why we think they're

02:52PM 1 distinguishable. I just don't think the numbers are 12 versus
02:52PM 2 three.

02:52PM 3 THE COURT: Okay.

02:52PM 4 MS. GARLOCK: But, you know, we're happy to -- we
02:52PM 5 don't think it's really ultimately a numbers game, it's more
02:52PM 6 about, you know, it's the evaluation of this case.

02:52PM 7 THE COURT: Yep. Okay. So, what do you need to --
02:52PM 8 tell me, so, a question that I -- that I often ask myself when
02:52PM 9 I have to decide things like this is what if I'm wrong.
02:52PM 10 What's the harm -- what's the harm that's going to occur if
02:52PM 11 I'm wrong.

02:52PM 12 And I understand -- and by "wrong" here, I mean,
02:52PM 13 there's no wrong, right, it's a discretionary decision on my
02:52PM 14 part. But by "wrong" I mean the Supreme Court ends up
02:52PM 15 deciding, affirming the 5th Circuit in the case that's pending
02:52PM 16 in the Supreme Court, I forget the name of it. That means
02:52PM 17 that we've now wasted a lot of money in discovery that didn't
02:53PM 18 need to have happened, and Mr. Little's clients are out a
02:53PM 19 substantial sum of money.

02:53PM 20 If -- if -- if the Supreme Court reverses and the
02:53PM 21 case -- this case proceeds, I understand your argument is that
02:53PM 22 we'll have lost, you know, eight months, or six months, or
02:53PM 23 five months, or whatever, of memory of some people. And --
02:53PM 24 and Ms. Auchterlonie says that you've gotten some depositions.

02:53PM 25 What do you need -- I mean, is there -- is there a

02:53PM 1 limited stay that I can impose here, and say, okay, here's
02:53PM 2 what we can do, the defendants will answer by a certain date
02:53PM 3 and you can take, you know, two depositions, and otherwise the
02:53PM 4 case is stayed. Is there some middle ground like that that
02:53PM 5 might solve the problem from your perspective?

02:54PM 6 MS. GARLOCK: So I think first we would, just to very
02:54PM 7 briefly hitch on no stay at all, you know, I -- I would point
02:54PM 8 the Court also to the harm beyond our ability to litigate this
02:54PM 9 case which is any amount, you know, we've -- we've obviously
02:54PM 10 covered that in our papers, the harm to consumers, and getting
02:54PM 11 them the relief they need. But so --

02:54PM 12 THE COURT: But tell me what the -- what's the real
02:54PM 13 harm there? Tell me what the real harm is there. I
02:54PM 14 understand this kind of esoteric harm, metaphysical harm,
02:54PM 15 but -- but tell me what the real issue is in delaying this
02:54PM 16 five or six or eight months in that regard.

02:54PM 17 I mean, I understand the reality of the harm in terms
02:54PM 18 of people not remembering today, what -- or, not remembering
02:54PM 19 in six months what they remember today. As I get older, I
02:54PM 20 understand more and more exactly that.

02:54PM 21 But -- but I'm not really grasping what the -- the
02:55PM 22 real harm is with respect to the delay and consumers
02:55PM 23 generally. Tell me -- tell me more about that.

02:55PM 24 MS. GARLOCK: I'm sorry, Your Honor, I was just
02:55PM 25 trying to very briefly, you know, make a pitch for the fact

02:55PM 1 that pitching this back six months might push back final
02:55PM 2 judgment.

02:55PM 3 THE COURT: Yeah. Okay.

02:55PM 4 MS. GARLOCK: We allege ongoing harm, we allege --

02:55PM 5 THE COURT: Yeah. I get it.

02:55PM 6 MS. GARLOCK: So that was a brief pitch.

02:55PM 7 THE COURT: And it's a good argument, it's just not
02:55PM 8 one that really turns my head. I'm a practical -- I like to
02:55PM 9 think of myself, anyway, as a practical guy. I practiced law
02:55PM 10 for 35 years and so, you know, I think I have a pretty good
02:55PM 11 sense of what's important, what's not important. And things
02:55PM 12 like this, while I'm not saying it's not important, it's
02:55PM 13 just -- there's not a real practical meat-and-potatoes injury
02:55PM 14 that you're talking about.

02:55PM 15 So tell me about -- so tell me about a -- perhaps a
02:55PM 16 middle ground that might solve the issue.

02:55PM 17 MS. GARLOCK: So we do also think that, you know, a
02:56PM 18 middle ground could be certainly requiring the defendants to
02:56PM 19 answer and then beginning discovery. And my colleague,
02:56PM 20 Stephanie Brenowitz, who's also here today and has been, you
02:56PM 21 know, more involved in some of the investigative stages of
02:56PM 22 this case might have a little bit of a better sense of, you
02:56PM 23 know, on a very specific level of, you know, which depositions
02:56PM 24 we might need, how many, you know, we're concerned both about
02:56PM 25 the witnesses on the -- on the part of the defendants and on

02:56PM 1 the part of the third-party debt collectors that they work
02:56PM 2 with, and consumers who we regularly have consumer witnesses
02:56PM 3 in our cases. I don't know whether we would decide to want to
02:56PM 4 have those here, but they are also people who might, you know,
02:56PM 5 over time not -- their memories would fade too. But of course
02:56PM 6 my colleague Ms. Brenowitz could -- could add anything more
02:56PM 7 specific.

02:56PM 8 THE COURT: Ms. Brenowitz.

02:56PM 9 MS. BRENOWITZ: Yes, good afternoon, Your Honor. We
02:56PM 10 would certainly be willing to consider a middle ground. As
02:57PM 11 Ms. Auchterlonie already said, we did take testimony from
02:57PM 12 Mr. Manseth. That was several years ago at this point.

02:57PM 13 And at that point, the Bureau had little, if any,
02:57PM 14 knowledge about one of the defendants in this case. The
02:57PM 15 United group, UHG, sorry, United Holding Group.

02:57PM 16 THE COURT: That's okay.

02:57PM 17 MS. BRENOWITZ: And so we had limited information.

02:57PM 18 Since that time, defendants are now contending that
02:57PM 19 both UDH and JTM are out of business, which is another issue
02:57PM 20 in terms of being able to obtain that evidence, documents,
02:57PM 21 witnesses, former employees. These are all things that have
02:57PM 22 changed since that testimony was taken. So certainly, we
02:57PM 23 would want to be able to depose the defendants and to be able
02:58PM 24 to conduct some third-party discovery which should really be
02:58PM 25 no cost to defendants. And that --

02:58PM 1 THE COURT: Well, except -- except they're going to
02:58PM 2 have to, I mean, they need a lawyer there, right?

02:58PM 3 MS. BRENOWITZ: For depositions, yes. But in terms
02:58PM 4 of obtaining --

02:58PM 5 THE COURT: Oh, document discovery, you mean?

02:58PM 6 MS. BRENOWITZ: Yes.

02:58PM 7 THE COURT: Okay.

02:58PM 8 MS. BRENOWITZ: You know, interviewing and obtaining
02:58PM 9 declarations. And I would also just like to briefly mention
02:58PM 10 that the ongoing harm here is also the fact that, as
02:58PM 11 Mr. Little mentioned, this is the conduct of third parties in
02:58PM 12 addition to the conduct of defendants that is continuing to
02:58PM 13 impact consumers every day. We are still receiving complaints
02:58PM 14 from people who have received phone calls and are paying, you
02:58PM 15 know, on these debts that are being collected unlawfully, and
02:58PM 16 that's nine months of consumers continuing to be impacted by
02:58PM 17 this harm, plus whatever the rest of the litigation is beyond
02:59PM 18 that, that is going to put out just that much longer until
02:59PM 19 those consumers receive the relief of not having to be, you
02:59PM 20 know, the victims of the defendant's misconduct by entering
02:59PM 21 that kind of a stay.

02:59PM 22 THE COURT: Okay. Mr. Little, what do you think
02:59PM 23 about this proposal of some sort of middle ground where we
02:59PM 24 allow some discovery to go forward but otherwise -- so -- so
02:59PM 25 we slow the case down, but we don't stop it.

02:59PM 1 MR. LITTLE: It's somewhat problematic, Judge,
02:59PM 2 because I hear the Bureau saying, hey, look, we want to talk
02:59PM 3 to third-party debt collectors, we want to talk to the
02:59PM 4 consumers. They had that opportunity during the CID process
02:59PM 5 and could have done that as part of their investigation. They
02:59PM 6 didn't need to start this lawsuit in order to make sure to
03:00PM 7 preserve those memories.

03:00PM 8 So if they didn't do that investigation long before
03:00PM 9 they started this lawsuit, that's on them. Right?

03:00PM 10 THE COURT: Well, I mean, yes and no. I mean, that
03:00PM 11 doesn't mean that they should be precluded now because of
03:00PM 12 another case that may call into question their authority to do
03:00PM 13 what they're doing. I mean, that doesn't mean, you know, I --
03:00PM 14 I -- I -- they didn't know that this was going to happen.
03:00PM 15 They had no way of knowing that there was going to be a motion
03:00PM 16 to stay. And it's kind of unfair, I think, to say to a
03:00PM 17 litigator, well, you should have done this three years ago,
03:00PM 18 and you didn't do it three years ago, so you can't do it now.
03:00PM 19 Well, I thought I was gonna be able to do it now, I didn't
03:00PM 20 think I was gonna need to do it three years ago.

03:00PM 21 MR. LITTLE: Fair, Judge. Fair.

03:00PM 22 But I guess the point I want to make is absent -- I
03:00PM 23 mean, I guess I could say common ground, yes, we could file
03:00PM 24 answers. But otherwise, if Your Honor recalls, as part of our
03:00PM 25 motion to dismiss there was no specific factual allegations in

03:01PM 1 the complaint, saying some consumers got these calls, they
03:01PM 2 didn't identify the third-party debt collectors. I can't in
03:01PM 3 good conscience and be a good lawyer allow my clients to sit
03:01PM 4 for depositions when I don't even have the factual basis for
03:01PM 5 the lawsuit.

03:01PM 6 So I have to go and conduct the \$100,000 worth of
03:01PM 7 discovery from the Bureau to get those recordings, to
03:01PM 8 understand who these consumers are that have these harms.

03:01PM 9 I don't have any factual basis to say, okay, this
03:01PM 10 consumer was called by this collection agency on this date,
03:01PM 11 and this is what was said or was not said.

03:01PM 12 I need all that information in advance so I can
03:01PM 13 prepare my clients and have them set down for depositions. So
03:01PM 14 I can't say oh, we can do one deposition of the defendant, or
03:01PM 15 two depositions of the defendant. I don't have any of the
03:01PM 16 discovery.

03:01PM 17 And so I would have to go spend, you know, tens if
03:01PM 18 not hundreds of thousands of dollars, and we're gonna get a
03:01PM 19 lot of data coming back, and there's gonna be a lot of
03:01PM 20 discovery costs coming here with third-party vendors in
03:01PM 21 processing all of this, and so I have an extreme cost. I
03:01PM 22 can't in good conscience let my client sit for a deposition
03:02PM 23 without seeing the evidence that's against us. So --

03:02PM 24 THE COURT: So you're saying -- you're saying --
03:02PM 25 you're saying that even if there were no stay, the depositions

03:02PM 1 are still a ways off because you need lots of documents and
03:02PM 2 lots of prep before those depositions can go forward?

03:02PM 3 MR. LITTLE: Absolutely, Judge.

03:02PM 4 THE COURT: Ms. Brenowitz, Ms. Garlock, why isn't he
03:02PM 5 right about that?

03:02PM 6 MS. BRENOWITZ: Your Honor, the documents and the
03:02PM 7 recordings that Mr. Little's referring to in this case, mostly
03:02PM 8 have come from the defendants. All of the recordings of
03:02PM 9 consumer phone calls have come from the defendants. They have
03:02PM 10 had them, they have much better access and organization to be
03:02PM 11 able to listen to those calls.

03:02PM 12 We've had to painstakingly piece together which call
03:02PM 13 belongs to which consumer, belongs to which paper documents.
03:02PM 14 So they have access to that, they've always had access to
03:02PM 15 that. We'd be more than happy to provide everything to them
03:03PM 16 again, but the documents in this case are mostly from
03:03PM 17 defendants.

03:03PM 18 And that is part of the reason why we would like to
03:03PM 19 proceed with third-party discovery as well. And we're more
03:03PM 20 than happy to provide that to the defendants but, again, most
03:03PM 21 of the evidence in this case has come from the documents that
03:03PM 22 defendants have provided to us of their limited supervision of
03:03PM 23 the debt collection agencies, of what the debt collection
03:03PM 24 agencies have provided to them over the years. And so they
03:03PM 25 have all -- all the same arguments run to what they could have

03:03PM 1 been doing with that information over the last several years.

03:03PM 2 Plus, there is the information that we couldn't have
03:03PM 3 obtained, haven't obtained, ongoing harm, the current
03:03PM 4 corporation that we barely knew about at the time of that
03:04PM 5 investigation, and all of that information that we had no
03:04PM 6 ability to obtain prior to the beginning of this lawsuit.

03:04PM 7 THE COURT: So --

03:04PM 8 MS. BRENOWITZ: And --

03:04PM 9 THE COURT: -- here's what I'd like to do. First of
03:04PM 10 all, I'm going to extend the defendant's time to answer or do
03:04PM 11 what they need to do with respect to responding to the
03:04PM 12 complaint.

03:04PM 13 Mr. Little, 30 days? Is that -- is that reasonable
03:04PM 14 for that?

03:04PM 15 MR. LITTLE: It is, Judge.

03:04PM 16 THE COURT: Okay. So, 30 days for the defendants to
03:04PM 17 answer.

03:04PM 18 And then I want both sides to submit to me a
03:04PM 19 proposal. And the proposal can be, you know, Mr. Little you
03:04PM 20 can say, look it, Judge, we just think that any discovery
03:04PM 21 taking place right now is harmful to us and we don't want to
03:04PM 22 do any.

03:04PM 23 I'm not saying I'm going to decide the stay in the
03:04PM 24 way that I'm suggesting that I'm thinking about deciding it, I
03:04PM 25 may deny it altogether, I may grant it altogether. I want

03:05PM 1 to -- I want to think about it some more, but I would like the
03:05PM 2 benefit of proposals from both sides as to what might be
03:05PM 3 palatable to them. So, you know, more or less a discovery
03:05PM 4 schedule between now and, let's say, next June, since I think
03:05PM 5 we're probably going to have a decision by then.

03:05PM 6 So, let's say a discovery schedule between now and
03:05PM 7 next June that -- that you can live with. And if the two
03:05PM 8 sides want to talk about it and submit one proposal that I
03:05PM 9 don't have to break a tie on, I'm happy to, you know, I'd love
03:05PM 10 that. But I think that that's probably unlikely. So you can
03:05PM 11 each submit something to me, and I, as I say, I will do
03:05PM 12 something in -- I'm not going to stay the time to answer. The
03:05PM 13 answer is due now 30 days. But I will give some thought and,
03:05PM 14 you know, make some decision with respect to somewhere on the
03:05PM 15 spectrum from complete stay to no stay, something -- and
03:06PM 16 there's lots of things in between. And I'll give some thought
03:06PM 17 to that.

03:06PM 18 Is that fair enough? Does that sound like a -- does
03:06PM 19 everybody understand what I'm saying, first of all?

03:06PM 20 MS. BRENOWITZ: Yes, Your Honor.

03:06PM 21 THE COURT: Mr. Little?

03:06PM 22 MR. LITTLE: Yes.

03:06PM 23 THE COURT: Okay. And does that -- anybody have a
03:06PM 24 strong objection to proceeding that way?

03:06PM 25 And let me know, folks. I second guess myself all

03:06PM 1 the time, so if you folks disagree with it, tell me.

03:06PM 2 MR. LITTLE: No, Judge, I'm happy to try to confer
03:06PM 3 with the Bureau, just give us some common ground, and if not
03:06PM 4 we'll submit our own proposal.

03:06PM 5 THE COURT: Great.

03:06PM 6 MR. LITTLE: And we'll cross that bridge when we get
03:06PM 7 there.

03:06PM 8 THE COURT: What do you think, Ms. Garlock, what do
03:06PM 9 you think is a reasonable time to allow you folks to talk and
03:06PM 10 then to submit a plan?

03:06PM 11 MS. GARLOCK: Off the top of my head, 14 days? You
03:06PM 12 know, if Your Honor wants it sooner we, of course, can talk
03:06PM 13 more quickly.

03:06PM 14 THE COURT: No, I think 14 days sounds reasonable to
03:07PM 15 me. Mr. Little, does that sound reasonable to you?

03:07PM 16 MR. LITTLE: It does, Judge.

03:07PM 17 THE COURT: Okay. So 14 days for that. So 14 days
03:07PM 18 from today -- let's say from tomorrow. So let's say the 27th,
03:07PM 19 since that's a Friday for that.

03:07PM 20 And then let's say -- what's 30 days from today?
03:07PM 21 It's probably a Saturday, I think, because today is a
03:07PM 22 Thursday, right?

03:07PM 23 THE CLERK: Yes, Judge.

03:07PM 24 THE COURT: So what's the following Monday?

03:07PM 25 THE CLERK: It's the 13th of November.

03:07PM 1 THE COURT: Okay. So, the 13th of November. That's
03:07PM 2 not a holiday, is it? Or is it?

03:07PM 3 THE CLERK: No. No, Friday is. The 10th.

03:07PM 4 THE COURT: Okay. The 13th of November for either a
03:07PM 5 joint submission or dueling submissions. Okay? And I'll
03:07PM 6 reserve the decision.

03:07PM 7 Anything else anybody wants to say to me before we
03:07PM 8 sign off today?

03:07PM 9 MR. LITTLE: Judge, the only thing --

03:07PM 10 THE COURT: Go ahead. Go ahead.

03:07PM 11 MR. LITTLE: The only thing I wanted to address in
03:07PM 12 response to the Bureau's argument with respect to the Illinois
03:07PM 13 case, the Northern District of Illinois case, there the
03:08PM 14 ongoing harm, there was a consent order in place, and so the
03:08PM 15 Court said, look, forget about the constitutionality of the
03:08PM 16 Bureau, we have a consent order in place. And so you need to
03:08PM 17 follow the order of the Court, or you're alleged to be not
03:08PM 18 following the order of the Court. So that's why I need to
03:08PM 19 address the ongoing harm. So, I know Ms. Garlock has
03:08PM 20 repeatedly said that that case is somewhat similar to this
03:08PM 21 case. There, of course, is no consent order in place, and
03:08PM 22 that is the stark difference in that case. I just wanted to
03:08PM 23 bring that to the Court's attention.

03:08PM 24 MS. AUCHTERLONIE: And if I may Your Honor? I also
03:08PM 25 wanted to bring to the Court's attention the Bureau has in

03:08PM 1 fact conducted third-party discovery on a number of the
03:08PM 2 agencies who were in the past working with defendants. And so
03:08PM 3 we are aware of both investigational hearings and significant
03:08PM 4 document requests propounded upon those third parties already.

03:08PM 5 THE COURT: Okay. So let me say this. What you
03:08PM 6 folks are doing right now makes me think I -- that just
03:08PM 7 submitting the proposals two weeks from now may not give you
03:09PM 8 folks enough to submit to me, so why don't we say in addition
03:09PM 9 to the proposals, you can submit a memorandum no more than
03:09PM 10 five pages in support of why your position is the better
03:09PM 11 position. And you can deal with things like the Illinois case
03:09PM 12 if you want to, Mr. Little, in that. Ms. Garlock, you can say
03:09PM 13 why Mr. Little is wrong about the Illinois case and why it
03:09PM 14 really is closer factually to what we're doing here. I'll
03:09PM 15 take whatever you guys want. But five pages, tops.

03:09PM 16 You've done a good job of briefing it already, I
03:09PM 17 don't want reinventing the wheel, I just want why. And,
03:09PM 18 again, I want to talk about the practicalities of this.
03:09PM 19 What's the real harm that's going to happen if we stay, if we
03:09PM 20 don't stay. That's what I want to get to. Okay?

03:09PM 21 MR. LITTLE: Thank you, Judge.

03:09PM 22 THE COURT: Okay. Thank you, all, very much. I look
03:09PM 23 forward to receiving, and I'll reserve decision. Thanks.

03:09PM 24 MS. BRENOWITZ: Thank you, Your Honor.

03:09PM 25 (Proceeding concluded at 3:09 p.m.)

1
2 **CERTIFICATE OF REPORTER**
3
4

5 In accordance with 28, U.S.C., 753(b), I
6 certify that these original notes are a true and correct
7 record of proceedings in the United States District Court for
the Western District of New York on October 12, 2023.
8
9

10 s/ Ann M. Sawyer
11 Ann M. Sawyer, FCRR, RPR, CRR
12 Official Court Reporter
13 U.S.D.C., W.D.N.Y.
14
15
16
17
18
19
20
21
22
23
24
25